

JOE WARDY  
MAYOR

JOYCE WILSON  
CITY MANAGER



## CITY COUNCIL

SUSAN AUSTIN  
DISTRICT NO. 1

ROBERT A. CUSHING, JR.  
DISTRICT NO. 2

JOSE ALEXANDRO LOZANO  
DISTRICT NO. 3

JOHN F. COOK  
DISTRICT NO. 4

PRESI ORTEGA, JR.  
DISTRICT NO. 5

PAUL J. ESCOBAR  
DISTRICT NO. 6

VIVIAN ROJAS  
DISTRICT NO. 7

ANTHONY W. COBOS  
DISTRICT NO. 8

SPECIAL CITY COUNCIL MEETING  
COUNCIL CHAMBERS  
FRIDAY, JANUARY 21, 2005  
2:00 P.M.

The City Council met at the above place and date at approximately 2:12 p.m. Mayor Joe Wardy present and presiding and the following Council Members answered roll call: Susan Austin, Robert A. Cushing, Jr., John F. Cook, and Vivian Rojas. Late arrivals: Jose Alexandro Lozano and Anthony W. Cobos at 2:13 p.m. Absent: Presi Ortega, Jr. and Paul J. Escobar.

### AGENDA

Discussion and Action on:

1. Subdivision Code requirements for stormwater management in a subdivision, including preservation of natural arroyos, and the staff interpretation and administration of these requirements;
2. Legal implications of prohibiting development within natural watercourses, drainage ways or channels (arroyos), and limitations of setting a moratorium on development of these areas;
3. Status report of the Ad-Hoc Committee progress; and
4. Recommendations for modifying and administering stormwater management in the City.
5. The City Council of the City of El Paso will retire into **EXECUTIVE SESSION** pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Chapter 551, Subchapter D, to discuss and take action on any of the following: (The items listed below are matters of the sort routinely discussed in Executive Session, but the City Council of the City of El Paso may move to Executive Session any of the items on this agenda, consistent with the terms of the Open Meetings Act.)

Section 551.071  
Section 551.072  
Section 551.073  
Section 551.074  
Section 551.076  
Section 551.087  
NEGOTIATIONS

#### CONSULTATION WITH ATTORNEY

DELIBERATION REGARDING REAL PROPERTY  
DELIBERATION REGARDING PROSPECTIVE GIFTS  
PERSONNEL MATTERS  
DELIBERATION REGARDING SECURITY DEVICES  
DELIBERATION REGARDING ECONOMIC

DEVELOPMENT

6. Adjournment.

Item 1: Subdivision Code requirements for Stormwater management in a subdivision, including preservation of natural arroyos, and the staff interpretation and administration of these requirements;

Ms. Patricia Aauto, Deputy City Manager for Building and Planning Services, gave an overview of the subdivision ordinance and the considerations staff gave to the Stormwater Subdivision "H" and the issue of concrete lining of arroyos.

Ms. Terri Cullen-Garney, Deputy City Attorney, commented on the legislative intent regarding legal interpretation of the ordinance and responded to questions by Representative Cook.

Representative Cushing asked Ms. Cullen-Garney questions regarding the legislative intent and asked Ms. Aauto if she had documentation of Council's legislative intent back when the provision was adopted.

Mr. Connor addressed Army Corp of Engineer Permit Numbers 401, Receding Body, and Permit 404, Wetland. He provided a history of the Engineering staff's interpretation of Stormwater Design, Subsection H, (19.16.050). He explained his department has created language for any property near an arroyo that requires a 404 permit in order for developers to comply with 19.16.050(H).

Representative Austin asked Mr. Connor whether or not a grading permit would be complete if developers did not satisfy the new language.

Mr. Matt Watson, Assistant City Attorney, gave legal advice.

Representative Cushing asked Ms. Aauto and Mr. Connor how Engineering has calculated the flow capacity in arroyos.

Mr. Connor explained there are different classifications in the Code to calculate flow.

Mr. Stuart Mitchell, citizen, stated that it was his belief the ordinance language as currently written was straightforward in preserving arroyos in their natural state except when necessary to protect public safety. He displayed on the overhead screen an excerpt from a plan regarding open space in arroyos.

Representative Cobos asked Mr. Mitchell where he had obtained the document displayed on the overhead.

Mr. Mitchell explained that the document was in the 1996-1997 City's Plan.

Ms. Aauto interjected that the excerpt presented by Mr. Mitchell had come not from the City's Master Plan, but from the Parks and Open Spaces Plan.

Mr. Mitchell objected to the Planning Research and Development staff's public declaration that 19.16.050(H) is not enforced. He could not understand how it could be the staff's authority to choose not to enforce an ordinance passed by the Council.

Representative Cook asked Ms. Aauto whether or not the excerpt cited by Mr. Mitchell for the Parks and Open Spaces Plan was ever adopted by Council.

Ms. Aauto replied that City staff was researching that right now.

Representative Cushing asked Mr. Mitchell questions regarding the historical application of the ordinances.

Mr. Mitchell again objected to the City's failure to enforce the law.

Representative Cushing stated he believes reasonable people could differ on the interpretation of subsection H.

Mr. Mitchell stated the ordinance is written clearly and is not ambiguous.

Representative Cobos stated he agrees with Mr. Mitchell's interpretation of subsection H.

Ms. Cullen-Garney explained that Mr. Mitchell's excerpt is for Park Open Spaces. Section 19.16.050(H) of the Municipal Code applies, on the other hand, to private land.

Mr. Matthew F. Carroll, citizen, spoke on his experience with City staff in trying to protect arroyos and to get the City employees to do their jobs. He came away with the impression that you should not mess with developers. He questioned Mr. Connor on whether or not the new Engineering language will apply to existing applications.

Mr. Connor stated yes, if the applications have not yet been granted.

Mr. Watson gave legal advice on applications that are pending and explained once an application is received, the code in existence at that time applies.

Representative Austin commented on Mr. Watson's legal interpretation of "vested rights".

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Item 2: Legal implications of prohibiting development within natural watercourses, drainage ways or channels (arroyos), and limitations of setting a moratorium on development of these areas;

Mr. Matt Watson, Assistant City Attorney, gave a presentation on the legal definition of "a taking" regulating private property must be an overriding public interest. He outlined notable court decisions.

Representative Cook asked Mr. Watson how his example of the Sheffield case applies to the current situation here in El Paso. He also commented on Mr. Watson's delivery of legal advice in open session as being the first time in six years legal advice has been given in this manner.

Representative Austin asked Ms. Terri Cullen-Garney, Deputy City Attorney, whether or not Council was waiving any attorney-client privilege by this delivery in open session.

Ms. Cullen-Garney stated that her understanding was that this session was to educate the public.

Representative Cook asked Ms. Cullen-Garney why the legal strategy for ASARCO could not even be shared with our State senator, but this issue can be shared with the public.

Ms. Cullen-Garney stated this is about arroyos in general, not about a specific case.

Representative Lozano asked Ms. Cullen-Garney whether or not the City can prevent a private property owner from building on his property.

Mayor Wardy commented that the City wants to seek a balance for both interests.

Representative Cushing stated that he thought Mr. Watson was giving an overview of "takings".

Representative Austin commented on the case-by-case rulings and the inability to make blanket statements.

Mr. Watson addressed the "scenic easement" argument as it has applied in recent court decisions.

Representative Cook asked Mr. Watson if his case law analysis applied to protection of ecologically sensitive areas. Mr. Watson stated it did and he would prefer to share that with the Council in Executive Session.

Mr. Watson addressed moratoriums and when they are legally justified. He advised that if a moratorium were imposed, he would not advise that it be applied only to arroyos.

Representative Cobos stated that the City restricted development on Crazy Cat Mountain and asked why the City could not restrict development in arroyos.

Ms. Patricia Adatao, Deputy City Manager for Building and Planning Services, explained that in 1994 City Council requested a specific zoning district be created to protect the mountains and foothills of the City. They did not go back and examine development that had been in progress within the previous 12 months.

Representative Cobos asked if the City can restrict development on the mountain peaks, then why cannot the City restrict development in the mountain valleys as well.

Mr. Watson requested that further discussion on the matter be held in Executive Session.

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Item 3: Status report of the Ad-Hoc Committee progress

Mr. George G. Sarmiento, Director of Planning, Research and Development, gave an update of the Ad Hoc Committee's progress and explained the makeup of the Committee. He read the Committee member's names into the record and added that this was a Citywide issue not just specific to the Westside. He explained the first two steps of the Committee would be to inventory the arroyos and to define "arroyo" with the assistance of utilizing GSA maps and GIS technology. He gave a Powerpoint presentation (on file in the City Clerk's office), utilizing FEMA Flood and USGS maps to analyze existing arroyos, remote sensing and aerial photos. He also provided comparison of similar situations with arroyos in other Southwestern cities.

Mr. Chuck Kooshian, Planning, Research and Development, provided additional information pertaining to the Powerpoint presentation.

The following members of the public commented:

Ms. Marshall Carter Tripp, representing Frontera Land Alliance, provided the Council with copies of a Powerpoint presentation and explained that land trusts help preserve significant lands that maintain and enhance the natural environment and cultural heritage of the Northern Chihuahua Desert Region. She gave an overview of the land trust's mission and work.

Mr. Charlie Wakeem commented that the City should follow the model set in Tucson. He stated that El Paso is more in line with Tucson, Phoenix and Albuquerque than with the rest of Texas.

Mr. Richard Schechter asked Council if the City can limit development or impose a moratorium if the development will create road and infrastructure problems.

Mr. Matt Watson, Assistant City Attorney, answered yes, and added that a shortage of streets that impeded access to the development could be a justification for a moratorium.

Ms. Lois Balen, Urban Biologist, Texas Parks and Wildlife Department, spoke on the importance of arroyos as living mechanisms and objected to their definition as "water conveyance channels". She explained the problems that will occur with wildlife if the arroyos are covered up.

Mr. Stuart Mitchell spoke on the application of Texas law. He explained that other major Texas cities have found ways to have healthful development of their cities. He asked that Council do the same and stated that the

Mountain Arroyos Neighborhood Association is in favor of development. He asked that the Council make clear to staff that the language in Section 19.16.050(H) be enforced in accordance with its plain language.

Mr. Matthew F. Carroll committed on the Ad Hoc Committee.

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Motion made by Representative Cushing, seconded by Representative Austin and unanimously carried to adjourn this meeting at 4:29 p.m.  
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APPROVED AS TO CONTENT:

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Richarda Duffy Momsen, City Clerk